

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mac Muir	Team: Squad #6	CCRB Case #: 202002191	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/05/2020 10:45 AM	Location of Incident: 60 Lafayette Street; 5th Precinct Detective Squad	Precinct: 05	18 Mo. SOL 9/5/2021	EO SOL 4/22/2022	
Date/Time CV Reported Fri, 03/06/2020 1:33 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 03/17/2020 10:32 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Michael Medina	05283	928768	005 DET
2. DT3 Michael Baer	3070	950039	005 DET
3. SGT Charles Zwilling	02777	935452	005 DET

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Michael Medina	Force: At 60 Lafayette Street in Manhattan, Detective Michael Medina used physical force against § 87(2)(b)	
B.DT3 Michael Medina	Discourtesy: At 60 Lafayette Street in Manhattan, Detective Michael Medina spoke discourteously to § 87(2)(b)	
C.DT3 Michael Medina	Force: At 60 Lafayette Street in Manhattan, Detective Michael Medina used physical force against § 87(2)(b)	
D.DT3 Michael Medina	Force: At 60 Lafayette Street in Manhattan, Detective Michael Medina restricted § 87(2)(b)'s breathing.	
E.DT3 Michael Baer	Discourtesy: At 60 Lafayette Street in Manhattan, Detective Michael Baer spoke discourteously to § 87(2)(b)	
F.DT3 Michael Baer	Abuse: At 60 Lafayette Street in Manhattan, Detective Michael Baer threatened to arrest § 87(2)(b)	
G.DT3 Michael Medina	Discourtesy: At 60 Lafayette Street in Manhattan, Detective Michael Medina spoke discourteously to § 87(2)(b)	
H.SGT Charles Zwilling	Abuse: At the 5th Precinct Detective Squad, Sergeant Charles Zwilling did not process § 87(2)(b)'s complaint regarding officers.	
I.DT3 Michael Baer	Abuse: At the 5th Precinct Detective Squad, Michael Baer threatened § 87(2)(b)'s employment status.	

### Case Summary

On March 6, 2020, this complaint was submitted to IAB by § 87(2)(b) and § 87(2)(b) via telephone. It was received at the CCRB on March 17, 2020 via IAB Log #2020-7594, closed pending litigation on June 18, 2020, and reopened on March 5, 2021.

On March 5, 2020, at approximately 10:45 a.m., § 87(2)(b) his attorney § 87(2)(b) and his friend § 87(2)(b) were at 60 Lafayette Street in Manhattan to attend a hearing in family court. As § 87(2)(b) stood outside the courtroom, Detectives Michael Medina and Michael Baer of the 5<sup>th</sup> Precinct Detective Squad approached § 87(2)(b) and asked to speak privately. In a stairwell next to the courtroom, Det. Baer questioned § 87(2)(b) about a previous court appearance involving § 87(2)(b)'s brother-in-law, who was a former member of the NYPD. Det. Medina grabbed § 87(2)(b)'s right hand and pushed him against a wall (**Allegation A: Force:** § 87(2)(g)). § 87(2)(b) asked why he was under arrest. Det. Medina allegedly replied, "Shut the fuck up" (**Allegation B: Discourtesy:** § 87(2)(g)). Det. Medina allegedly knocked § 87(2)(b)'s legs out from underneath him (**Allegation C: Force: Exonerated.** § 87(2)(b)) fell to the ground, and Det. Medina allegedly put his knee onto § 87(2)(b)'s back, restricting his breathing (**Allegation D: Force:** § 87(2)(g)). Det. Medina and a group of court officers placed § 87(2)(b) into handcuffs. Det. Baer and Det. Medina escorted § 87(2)(b) out of the building.

At the same time, § 87(2)(b) and her friend Rose Ann § 87(2)(b) exited a taxi in front of 60 Lafayette Street. Det. Baer allegedly told § 87(2)(b) "You come to the fucking precinct, you're gonna get arrested" (**Allegation E: Discourtesy:** § 87(2)(g)) (**Allegation F: Abuse of Authority:** § 87(2)(g)). In the police vehicle, Det. Medina allegedly banged on the steering wheel and said to § 87(2)(b) "I'm tired of this shit. I can't wait to fucking retire. 19 years and I'm tired of you fucking animals" (**Allegation G: Discourtesy:** § 87(2)(g)).

At the 5<sup>th</sup> Precinct stationhouse, § 87(2)(b) told allegedly told Sgt. Charles Zwilling of the 5<sup>th</sup> Precinct Detective Squad that he wanted to file a complaint. Sgt. Zwilling allegedly walked away without taking a complaint (**Allegation H: Abuse of Authority:** § 87(2)(g)). Det. Baer allegedly told § 87(2)(b) that he was going to lose his job (**Allegation I: Abuse of Authority:** § 87(2)(g)). § 87(2)(b) was arrested for § 87(2)(b), § 87(2)(a) 160.50 § 87(2)(b). The criminal case was ultimately dismissed.

As Det. Medina and Det. Baer were not equipped with BWCs, and there were no surveillance cameras where the alleged force occurred, there was no video evidence of this incident.

### Findings and Recommendations

**Allegation A – Force: At 60 Lafayette Street in Manhattan, Detective Michael Medina used physical force against § 87(2)(b)**

**Allegation C – Force: At 60 Lafayette Street in Manhattan, Detective Michael Medina used physical force against § 87(2)(b)**

§ 87(2)(b) testified that as he stood outside a courtroom inside 60 Lafayette Street, he was approached by Det. Baer and Det. Medina, who asked if they could all speak in a stairwell nearby. There, Det. Baer asked § 87(2)(b) a series of questions about a court appearance from a month prior and said he had been trying to contact him. § 87(2)(b) asked Det. Baer a series of questions about these contact attempts. Det. Baer told § 87(2)(b) that he was not supposed to have been at the court appearance a month before. As they spoke, without issuing any instructions, Det. Medina grabbed § 87(2)(b)'s right hand and slammed him forcefully against the wall. § 87(2)(b) pushed against the wall because his face was pressed against it. He did not sustain any injuries as a result.

While he was already against the wall, Det. Medina told him he was under arrest, grabbed § 87(2)(b) by the back of the neck, and pressed him against the wall even more. Det. Medina did not restrict § 87(2)(b)'s breathing by grabbing the back of his neck. § 87(2)(b) pressed against the wall to get away from Det. Medina, who pulled § 87(2)(b) away from the wall and knocked his legs out from underneath him with a "leg sweep."

§ 87(2)(b) testified that she heard § 87(2)(b) yell her name from the stairwell. When she walked into the stairwell, § 87(2)(b) said he was being arrested. An officer grabbed § 87(2)(b) by the back of the neck and pushed him against the wall. Four or five officers took him to the ground.

Det. Baer resigned from the NYPD (BR 01) and was not interviewed regarding this incident.

Det. Medina testified that he was at the 5<sup>th</sup> Precinct Detective Squad when Det. Baer told him that he needed assistance with an arrest. He did not know the reason for the arrest. At 60 Lafayette Street, Det. Baer spoke with court officers who directed them to § 87(2)(b). A court officer escorted § 87(2)(b) into a stairwell to prevent from blocking the courtroom entrance, and to save § 87(2)(b) the embarrassment of being arrested in front of his family. Det. Baer explained the details of the case to § 87(2)(b) who was tense and asked for more information. Det. Baer continued to explain the circumstances around the arrest and said that § 87(2)(b) was under arrest for violating an order of protection. Det. Medina did not listen to all the details of the conversation. § 87(2)(b) appeared to be angry; with clenched fists, shoulders held high, and a frustrated look on his face. Det. Baer did not issue any instructions. He only said that § 87(2)(b) was under arrest. After Det. Baer spoke to § 87(2)(b) for approximately five minutes, Det. Medina introduced himself by providing his name and rank, and informed § 87(2)(b) that he needed to understand he was being arrested. He grabbed § 87(2)(b)'s wrist to place him into handcuffs. § 87(2)(b) pulled his wrist away and flailed his arms. Det. Medina pushed § 87(2)(b) against the wall, which was approximately one foot away, by touching § 87(2)(b)'s upper back. The front of § 87(2)(b)'s body touched the wall. Det. Medina did not remember if § 87(2)(b)'s head touched the wall. Approximately five court officers entered the stairwell and tried to help him restrain § 87(2)(b) by grabbing his upper body. § 87(2)(b) lost his balance, and they all accidentally fell to the ground. No one attempted to knock § 87(2)(b)'s legs out from underneath him.

According to an Unusual Occurrence Report generated by the New York State Court System (BR 02), when Det. Medina and Det. Baer attempted to handcuff § 87(2)(b) he resisted and attempted to escape.

§ 87(2)(b) was arrested for § 87(2)(b), § 87(2)(a) 160.50 (BR 0X). The arrest narrative notes that he refused to place his hands behind his back and violently resisted.

Sgt. Charles Zwilling of the 5<sup>th</sup> Precinct Detective Squad generated a TRI (BR 07) regarding Det. Baer and Det. Medina's use of force. It noted that they introduced themselves, informed § 87(2)(b) that he was under arrest, and that in response, he crossed his arms and refused to place his hands behind his back. To control § 87(2)(b) the detectives placed him against a wall before bringing him to the ground.

Force may be used when it is reasonable to place a person into custody or to prevent escape from custody. MOS will only use reasonable force necessary to gain control or custody of a subject. Patrol Guide 221-01 (BR 03).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation B – Discourtesy: At 60 Lafayette Street in Manhattan, Detective Michael Medina spoke discourteously to § 87(2)(b)**

§ 87(2)(b) testified that as Det. Medina held him against the stairwell wall, he asked why he was under arrest. Det. Medina replied, “Shut the fuck up. You’re under arrest.” No one else was present at the time.

Det. Medina denied ever saying “fuck” or “shut the fuck up” to § 87(2)(b)

Det. Baer resigned from the NYPD (BR 01) and was not interviewed regarding this incident.

§ 87(2)(g)

§ 87(2)(g)

**Allegation D – Force: At 60 Lafayette Street in Manhattan, Detective Michael Medina restricted § 87(2)(b) s breathing.**

§ 87(2)(b) testified that while lying on the ground, Det. Medina placed his knee on § 87(2)(b) s back. This caused § 87(2)(b) s breathing to feel restricted. Det. Medina kept pressure on § 87(2)(b) s back and forced his right arm up. Over the course of what felt like several minutes, § 87(2)(b) struggled to prevent from being placed into handcuffs. He screamed for help from § 87(2)(b) who was in the adjacent hallway. § 87(2)(b) opened the door and appeared to record with her cell phone. § 87(2)(b) grabbed the hallway door with his right hand. Det. Baer grabbed his hand and pulled it behind his back. A court officer tried to close the door. § 87(2)(b) walked into the stairwell. A court officer called for more security. Five to seven officers responded and got on top of § 87(2)(b) who responded by allowing Det. Baer and Det. Medina to place him into handcuffs.

§ 87(2)(b) § 87(2)(b) s attorney, testified that he was in the courtroom when he heard § 87(2)(b) yelling for help outside. He ran to a stairwell, where he observed Det. Baer, Det. Medina, and three court officers on top of § 87(2)(b) Both Det. Baer and Det. Medina had their knees on § 87(2)(b) s back. However, § 87(2)(b) was unable to differentiate between the two detectives. One had his knee on § 87(2)(b) s upper back. Another had his knee on § 87(2)(b) s waist. The officers held § 87(2)(b) in that position for approximately two minutes, at which point they escorted § 87(2)(b) away. § 87(2)(b) returned to the courtroom and asked for the hearing to be

postponed because his client had been arrested.

§ 87(2)(b) did not testify as to whether officers placed their knees on § 87(2)(b)

Det. Medina testified that he lost his balance and fell to the ground along with § 87(2)(b) and a group of court officers. § 87(2)(b) was face-down and resisted by tensing his arms. Det. Medina denied placing his knee on § 87(2)(b)'s body to pin him to the ground.

Det. Baer resigned from the NYPD (BR 01) and was not interviewed regarding this incident.

According to an Unusual Occurrence Report generated by the New York State Court System (BR 02), when Det. Medina and Det. Baer attempted to handcuff § 87(2)(b) he resisted and attempted to escape. Four New York State Court officers testified that as they attempted to restrain § 87(2)(b) they were each injured; one officer injured his shoulder and knee, another officer injured his shoulder, another officer injured his right hand, and another officer injured

§ 87(2)(b) testified that from the time Det. Medina initially grabbed him to the time he was placed into handcuffs, he attempted to prevent from being handcuffed. Det. Medina and § 87(2)(b) described a group of officers taking § 87(2)(b) to the ground. Det. Medina denied placing his knee on § 87(2)(b)'s body. § 87(2)(b) testified that one detective had his knee on § 87(2)(b)'s upper back, and another on his waist. However, he was unable to distinguish between the detectives. Four court officers were injured as they attempted to restrain § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

**Allegation E – Discourtesy: At 60 Lafayette Street in Manhattan, Detective Michael Baer spoke discourteously to § 87(2)(b)**

**Allegation F – Abuse of Authority: At 60 Lafayette Street in Manhattan, Detective Michael Baer threatened § 87(2)(b) with arrest.**

§ 87(2)(b) testified that as she approached the police vehicle outside 60 Lafayette Street, Det. Baer told her, “You come to the fucking precinct, you’re gonna get arrested.”

§ 87(2)(g)

**Allegation G – Discourtesy: At 60 Lafayette Street in Manhattan, Detective Michael Medina spoke discourteously to § 87(2)(b)**

§ 87(2)(b) testified that once he was placed inside the police vehicle, he asked what steps the detectives had taken to find him at his home. Det. Medina banged on the steering wheel and said, “I’m tired of this shit. I can’t wait to fucking retire. 19 years and I’m tired of you fucking animals.” § 87(2)(b) replied that he was not an animal. Det. Medina replied, “No. You’re an animal. You’re just dressed a little better than most of them.”

Det. Medina denied directing the word “fuck” toward § 87(2)(b) at any point, or that any officer said, “I’m tired of this shit. I can’t wait to fucking retire,” “I’m tired of you fucking animals,” or “You’re an animal. You’re just dressed a little better than most of them.”

Det. Baer resigned from the NYPD (BR 01) and was not interviewed regarding this incident.

§ 87(2)(g)

§ 87(2)(g)

**Allegation H – Abuse of Authority: At the 5th Precinct Detective Squad, Sergeant Charles Zwilling did not process § 87(2)(b) s complaint regarding officers.**

§ 87(2)(b) testified that while lodged in a cell in the 5<sup>th</sup> Precinct Detective Squad, he told Sgt. Zwilling that he wanted to report that Det. Medina had assaulted him and used excessive force, and that he wanted to file a complaint. Sgt. Zwilling said that he would be with him shortly. Sgt. Zwilling returned and told § 87(2)(b) that although he did not know what was going on, it appeared § 87(2)(b) had brought his personal family problems into the precinct. § 87(2)(b) repeated that he had been assaulted and said he wanted to file a complaint at the precinct. Sgt. Zwilling did not reply and walked away. He never took a complaint from § 87(2)(b)

Sgt. Zwilling testified that he spoke with § 87(2)(b) while he was held in the 5<sup>th</sup> Precinct Detective Squad. § 87(2)(b) complained that he was upset that he had been arrested, that his wrists hurt, and that Detectives Baer and Medina had been “rough” with him. However, he never said that he wanted to file a complaint.

As stated above, Det. Baer resigned from the NYPD (BR 01).

§ 87(2)(g)

§ 87(2)(g)

**Allegation I – Abuse of Authority: At the 5th Precinct Detective Squad, Detective Michael Baer threatened § 87(2)(b) s employment status.**

§ 87(2)(b) testified that Det. Baer complained that § 87(2)(b) wanted to report the incident to IAB, and said, “I just reported you to your job. You’re gonna get in trouble. Your employer is going to know immediately. They know already that you’ve been arrested...you’re going to get in trouble. You’re gonna lose your job.”

§ 87(2)(g)

**Civilian and Officer CCRB Histories**

- § 87(2)(b)

§ 87(2)(b)

- [REDACTED]
- [REDACTED]
- [REDACTED]
- § 87(2)(b) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Det. Medina has been a member of service for 20 and has been a subject in one CCRB complaint and two allegations, none of which were substantiated. § 87(2)(g) [REDACTED]
- Sgt. Zwilling has been a member of service for 17 years and has been a subject in three CCRB complaints and four allegations, of which two were substantiated.
  - Case #200808381 involved substantiated allegations force and retaliatory summons against Sgt. Zwilling. The Board recommended Charges and the NYPD imposed Instructions.

**Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- § 87(2)(b) [REDACTED] filed a Notice of Claim with the City of New York claiming false arrest; false imprisonment; police cover-up; police conspiracy; negligence; violating due process of law; fabrication of evidence; violation of civil and constitutional rights; negligent testing, analyzing, hiring, training, re-training, retaining, investigating, assigning, promoting, monitoring, disciplining and supervising of police officers; malicious prosecution; and failure to intervene and mitigate; and is seeking \$1,000,000 as redress (BR 06).
- According to the Office of Court Administration (OCA), neither § 87(2)(b) [REDACTED] nor § 87(2)(b) [REDACTED] have a history of convictions in New York City.

Squad 6

Investigator: <u>Mac Muir</u>	Supervising Investigator <u>Muir</u>	November 19, 2021
Signature	Print Title & Name	Date

Squad Leader: <u>Jessica Peña</u>	IM <u>Jessica Peña</u>	11/19/2021
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date